

**FRANCHISE TAX BOARD  
MINUTES  
JULY 5, 2000**

The Franchise Tax Board met in open session at 1:00 p.m. at the State Board of Equalization, 5901 Green Valley Circle, Hearing Room 207, Culver City, California. Present were Hon. Kathleen Connell, Hon. Dean Andal, and Hon. B. Timothy Gage.

**Franchise Tax Board**

**Staff Participating:** Gerald H. Goldberg, Brian W. Toman, Donald L. Buxton, Benjamin F. Miller, Patrick J. Kusiak, and Katie Horn.

**Others Participating:** Atilla M. Taluy representing File Your Taxes; Richard E.V. Harris; Gregory Turner representing California Taxpayers Association; Tim Hayes of Deloitte & Touche; John Murphy representing Cisco Systems; and Jeffrey Vesely of Pillsbury Madison & Sutro.

**Item 1. - Approval of Board Minutes**

The Minutes of the March 27, 2000, Franchise Tax Board meeting were unanimously approved.

**Item 2. – Legislative Matters**

Bills for Position were approved on a 2-0 vote (Member Gage abstaining) as follows:

<b><u>Legislative Bill</u></b>	<b><u>Board Position</u></b>	<b><u>Legislative Bill</u></b>	<b><u>Board Position</u></b>
AB 1358	No Position	AB 2799	Support
AB 1784	Support	SB 1661	No Position
AB 1822	Support	SB 1710	No Position
AB 1901	Support	SB 1724	Support
AB 1903	No Position	SB 1822	No Position
AB 1924	Support	SB 1828	Support
AB 1959	Support	SB 1932	No Position
AB 1992	No Position	SB 1933	No Position
AB 2102	No Position	SB 1980	No Position
AB 2212	No Position	SB 2027	No Position
AB 2371	Support		

**Item 3. – Update on Filing Portal**

Gerald Goldberg told the Board that there were 2.3 million returns filed electronically for this past filing season, which was a 45-percent increase over the previous filing season. The highest growth was for taxpayers that filed on-line through the use of third-party transmitters, using their home PC. This growth was 110 percent. Practitioner E-filing increased 42 percent. Although clear figures were not available for the 540-2EZ, it has resounded well with taxpayers. Nearly 600,000 540-EZs were filed. Mr. Goldberg also

reported that FTB was moving forward with the filing portal. The Feasibility Study Report has been approved and we are purchasing the hardware. Mr. Goldberg reported that approximately five vendors have indicated that they will participate: FreeTaxPrep.com, FileYourTaxes.com, BSmartForms, TurboTax, and TaxCutH&RBlock.

There was discussion of the use of PIN numbers by other states, and the Board asked staff to report back on PIN numbers at a subsequent meeting of the Board.

#### **Item 4. – Report on Aged Docketed Protests**

Ben Miller reported to the Board that there were 225 docketed protests that are classified as “aged.” Forty-eight of those cases are assigned to Settlement Bureau. In response to a Member’s inquiry, Brian Toman stated that as of April there were 14 cases that had been in Settlement for more than 9 months and that currently there were only 8 or 9 cases in that category. Mr. Toman reported that all of those cases should be out of Settlement Bureau inventory by the end of the year.

#### **Item 5. – Regulation Matters**

- a. Proposed Regulations 19041 and 19044 (Protests) – Report on symposium and Board direction on how to proceed.

The Board heard from the following members of the public concerning the proposed regulations:

Tim Hayes	Deloitte & Touche
John Murphy	Cisco Systems
Gregory Turner	California Taxpayers Association
Jeffrey Vesely	Pillsbury Madison & Sutro
Richard E. V. Harris	

The Board approved the matters reflected in the consent calendar (Exhibits E1 and E2).

The Board acted on items in the matrix (Exhibit E3) as follows:

##### **Proposed Regulation 19041**

Item 1 (effective date) - The Board voted unanimously to approve.

Item 2 (limited to grounds in protest letter) - The Board made amendments to the staff version and voted to approve 2-0 (Member Gage abstaining).

Item 3 (right to request) - The Board made amendments to the public version and voted unanimously to approve.

Item 4 (12-month period for protest without hearing) - The Board voted unanimously to approve the staff position recommending rejection.

Item 5 (24-month hard cap) - The Board voted 2-0 (Member Gage abstaining) to approve the public position retaining the 24-month hard cap.

Item 6 (suspend beginning of 24-month period until staff member handling protest identified) - The Board made amendments and voted unanimously to disapprove language allowing the 24-month period to begin when the staff member handling the protest has been identified.

Item 7 (suspend 24-month period for 9 months after taxpayer fully responds to request for information) - The Board voted 2-1 (Member Gage voting no) to strike the entire paragraph.

Item 8 (suspend 24-month period if FTB fails to respond to Public Records Act request) - The Board voted unanimously to reject the public language.

Item 9 (if no NOA within 24 months, FTB shall issue NOA upon request) - The Board voted unanimously to reject the staff language and approve the public language, as amended.

Item 10 (shift burden of proof before BOE) - The Board voted 2-0 (Member Gage abstaining) to reject the public language.

#### Proposed Regulation 19044

Item 1 (effective date) - The Board voted unanimously to approve.

Item 2 (suspend the 18-month period to hold hearing until staff member handling protest has been identified) - The Board voted 2-1 (Member Gage voting no) to reject the staff language.

Item 3 (hearing rescheduling) - The Board voted unanimously to approve the staff language, with the exception that, anywhere in the regulation the words "extreme hardship" appear, they will be replaced with the words "good cause."

Item 4 (limitation on changes to designated hearing officer) - The Board voted unanimously to reject the public language.

Item 5 (transcripts of hearing) - The Board voted 2-0 (Member Gage abstaining) to reject the staff-recommended deletion.

Item 6 (auditor available at hearing) - The Board voted unanimously to approve the public language, as corrected.

Item 7 (documents and statements) - The Board voted unanimously to approve the staff language.

Item 8 (submission of additional information) - The Board voted unanimously to approve the staff language.

- b. Proposed Amendments to Regulation 25137 (c)(1)(A) (Sales Factor-Occasional Sale of Intangible Assets) – Report on hearing and Board direction on how to proceed.

The Board heard from the following members of the public concerning the proposed regulation:

Jeffrey Vesely	Pillsbury Madison & Sutro
Tim Hayes	Deloitte & Touche

Member Andal requested staff to report back at the next Board meeting with definitions for three words-- "incidental," "occasional," and "substantial"--and also with a recommendation as to whether or not the regulation should be made retrospective.

- c. Proposed Amendments to regulation 19513 (Tax Clearance Certificates-Estates Distributable to Nonresident Beneficiaries) – Request for authorization to proceed.

The Board authorized staff to proceed with the formal regulatory process.

#### **Item 6. – Symposium on Interest-Offset Issues After Hunt-Wesson**

The Board voted unanimously to put this item over until the next Board meeting.

The Board directed staff to return with multiple alternatives, including the staff proposal and the alternative that Member Andal proposed to continue to treat the California companies the same way as they were treated before Hunt-Wesson. Staff was further directed to meet with individuals who have corresponded with the Board regarding other possible alternatives.

#### **Item 7. – Report on Notice to Taxpayers of Third Party Contacts and the Information Practices Act**

The Board unanimously accepted the staff's report.

#### **Item 8. – Update on Public Records Act Procedures**

The Board unanimously accepted the staff 's update.

**Item 9. - Child Support**

Gerald Goldberg told the Board that the charter is ready to be signed by Secretary Johnson. Mr. Goldberg stated that the charter essentially sets out the performance objectives and is the key document for putting together procurement.

**Item 10. – Administrative Matters**

FY 2001/02 Budget Development: Consideration of Potential Budget Change Proposals.

Staff was directed to proceed with development of the BCP's, subject to later review and approval by the Board.

**Item 11. – Applications for Voluntary Disclosure**

The Board approved 2-0 (Member Andal abstaining) an Application for Voluntary Disclosure pursuant to Revenue and Taxation Code section 19191.

**Item 12. – R&TC Section 23101.5 Petition**

The Board approved 2-0 (Member Andal abstaining) an application for an extension of a determination under R&TC Section 23101.5 submitted by SAUDI ARAMCO.

**Item 13. – Executive Officer's Time**

Mr. Goldberg had no items for discussion.

**Item 14. – Board Members' Time**

The Board had no items for discussion.

**Item 15. – Chair Announcement Regarding Closed Session**

Chair Connell announced the agenda for the Closed Session, pursuant to Government Code Section 11126.3.

The meeting was adjourned at 3:45 p.m.

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Board Secretary

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Date